



September 27, 2001

Ms. Zandra L. Narvaez
Attorney
Legal Services Division
City Public Service of San Antonio
P.O. Box 171
San Antonio, Texas 78296-1771

OR2001-4350

Dear Ms. Narvaez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152491.

The City Public Service of San Antonio ("CPS") received eight requests for gas and electric utility maps. You state that you have released CPS maps to the requestors that contain "only certain non-competitive components," including pole locations, manholes, and map grid numbers. You claim that certain system map components are excepted from disclosure under sections 552.104 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your section 552.133 arguments.¹ Section 552.133 excepts from disclosure a public power utility's information related to a competitive matter. The exception defines "competitive matter" as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity. The governing body must also, in like manner, determine that the release of the information would give an advantage to competitors or prospective competitors. Section 552.133(a)(3) lists thirteen categories of information that may not be deemed competitive matters. The attorney general may conclude that section 552.133 is inapplicable to the requested

¹ House Bill 2812 renumbered section 552.131, the statutory predecessor to section 552.133. Act of May 22, 2001, 77th Leg., R.S., H.B. 2812, § 21.001(52) (to be codified at Gov't Code § 552.133).

information only if, based on the information provided, the attorney general determines the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. Gov't Code § 552.133(c). Further, section 552.133(b) provides:

Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Gov't Code § 552.133(b).

The CPS Board passed a resolution by vote pursuant to section 552.131 (now section 552.133) in which it determined that "system mapping information is related to CPS' competitive activity and would, if disclosed, give advantage to competitors or prospective competitors of CPS." Further, you state that "the Board has found '[a]ll systems locational information' and 'all information regarding retail customers' to be types of competitive matters." The submitted gas and electric map system component information thus relates to a competitive matter as defined under the CPS resolution. Furthermore, the submitted map component information is not among the thirteen categories of information expressly exempted from the definition of competitive matter and we have no evidence CPS failed to act in good faith. Consequently, we agree that the submitted map component information is excepted from disclosure pursuant to section 552.133. Based on this finding, we do not address your additional arguments.

Additionally, you request that this office issue a previous determination allowing CPS to withhold the submitted competitive mapping components from gas and electric system maps under section 552.133. Therefore, as per your request, this letter ruling shall serve as a previous determination under section 552.301(a) that the competitive mapping components found in attachment A are excepted from public disclosure under section 552.133. *See* Gov't Code §552.301(a), (f); *see also* Open Records Decision No. 673 (2001). This previous determination applies only to the types of competitive mapping components found in attachment A. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the

resolution deeming system mapping information to be a competitive matter stays in effect and the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, CPS need not ask for a decision from this office again with regard to future requests to CPS for competitive mapping components. *See id.*

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/seg

Ref: ID# 152491

Enc. Submitted documents

c: Mr. Mike Martin
CDS/Muery Services Engineering & Surveying
3411 Magic Drive
San Antonio, Texas 78229
(w/o enclosures)

Mr. Rob Leonhard
Coyle Engineering, Inc.
31320 IH 10 West
San Antonio, Texas 78006
(w/o enclosures)

Mr. Daniel Avila
Lockwood, Andrews & Newnam, Inc.
1210 Arion Parkway, Suite 100
San Antonio, Texas 78216-2880
(w/o enclosures)

Mr. Barry Zuercher
Pape-Dawson Engineers, Inc.
555 East Ramsey
San Antonio, Texas 78216
(w/o enclosures)

Mr. Alfred Gutierrez
Sun Belt Engineers, Inc.
3211 Nacogdoches Road
San Antonio, Texas 78217
(w/o enclosures)

Ms. Kara Heasley
Vickrey & Associates, Inc.
7334 Blanco Road, Suite 109
San Antonio, Texas 78216
(w/o enclosures)

Mr. John La Ro
Subdivision Coordinator
W.F. Castella & Associates, Inc.
6800 Park Ten Boulevard, Suite 180 South
San Antonio, Texas 78213
(w/o enclosures)